

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	Mamdani, et al
Serial Number	09/690,213
Filing Date:	October 17, 2000
Art Unit:	2617
Examiner:	Iqbal, Khawar
For:	Method and system for facilitation of wireless e-commerce transactions

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Commissioner for Patents
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REQUEST FOR RECONSIDERATION

The final rejection mailed May 1, 2009 has procedural and substantive errors and should be withdrawn. The Communication filed February 15, 2009 included claim amendments and arguments that either were not considered by the Examiner at all or, if considered, were not formally addressed (in formulating the final rejection). This is clear from even a cursory review of the final rejection.

In particular, the “Disposition of Claims” on PTOL-326 in the final rejection identifies the pending claims as “Claims 1-3, 5-45, 47-49 and 51,” and the Examiner’s obviousness rejection (paragraph 6) identifies just these claims. This is not an accurate list or treatment of the pending claims, however, as the Communication filed February 15, 2009 cancelled claims 13, 35, 38-39 and 44-45, and it added claims 52-53. So, in the first instance, the final rejection did not even consider the proper set of claims.

More importantly, the Communication filed February 15, 2009 included amendments to the claims, and those amendments do not appear to have been considered by the Examiner. Claim 1 is representative. That claim was amended on February 15, 2009 to remove a limitation

directed to “transmitting a message ... indicating that the wireless transaction has been fulfilled” and to add the following limitation:

“at a third time distinct from the first time and the second time, optically scanning a second transaction code from the visual display of the wireless communication device to complete the wireless transaction.”

The Examiner’s arguments (in paragraph 6) indicate that these amendments were never considered. In particular, in applying the cited art, the final rejection actually refers to the deleted limitation (see, e.g., page 6, last paragraph, last line, and page 7, lines 10-12 and lines 20-22), and the rejection makes no mention whatsoever of the newly-added limitation. This newly-added limitation was discussed with the Examiner during the telephone interview on February 4, 2009, so the Examiner clearly was aware of it. Yet, the final rejection does not address it.

For at least these reasons, the final rejection contravenes 37 CFR §1.104(c)(2), and it should be withdrawn.

Further, the Examiner does not appear to have considered the Rule 132 Declaration of Malik Mamdani that was submitted with the Communication on February 15, 2009, as the final rejection makes no mention of that paper either. That evidence should be considered and made of record, as it goes directly to the Applicants’ arguments that the claimed subject matter (as of February 15, 2009) is non-obvious over the art of record.

Applicants are entitled to have their amendments and arguments properly considered; here, a review of the final rejection indicates that they were not; for this reason alone, the Office is requested to withdraw the paper mailed May 1, 2009, to reconsider the claims in view of the arguments and evidence submitted on February 15, 2009, and to allow the case.

Applicants acknowledge the new double patenting rejection and will file a terminal disclaimer under separate cover if the Office still considers it necessary following its reconsideration of the actual pending claims.

Respectfully submitted,

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